

DISPUTE CODES MNSD, FF

INTRODUCTION

This hearing dealt with an applications filed by both the landlord and the tenant pursuant to the *Residential Tenancy Act*. The landlord seeks:

1. Monetary order for return of pet damage or security deposit pursuant to Section 38; and
2. Recovery of the filing fee paid for this application pursuant to Section 67.

Total sum sought by the landlord: \$425.00 plus the filing fee.

The tenant seeks:

1. A monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement;
2. An order that the landlord return all of the security deposit; and
3. Recovery of the filing fee paid for this application pursuant to Section 67.

Total sum sought by the tenant: \$1,124.00 plus the filing fee.

Preliminary Matters – Service

I accept that the landlord was properly deemed served with the tenant's Application for Dispute Resolution hearing package by way of registered mail.

The tenant testified that she had not been served with the landlord's application for dispute resolution at all. The tenant testified that she became aware of the landlord's application when she was advised of it by the Residential Tenancy Branch when she filed her own application to recover her security deposit. The tenant says she was served by registered mail on October 23, 2009 with the landlord's evidence package.

The landlord testified that he believed the tenant had been served with the landlord's application for dispute resolution by way of registered mail however he could not find a receipt to prove the mailing.

Findings on Preliminary Matters – Service

The landlord states that he “believes” the tenant was served with the landlord’s application for dispute resolution by way of registered mail but he cannot confirm the date the mail was sent nor could he supply a receipt to support his belief. The tenant states that while she was served by registered mail with the landlord’s evidence package on October 23, 2009 she has not been served with the landlord’s application. In this I prefer the evidence of the tenant and I am not satisfied that the tenant was properly served with the application for dispute resolution. The landlord’s application is therefore dismissed.

Tenant’s Application

The tenant testified that she vacated the premises on June 29, 2009 at which time she provided the landlord with her forwarding address in writing and returned her keys to the rental unit. The tenant testified that to date the security deposit of \$462.00 and the \$50.00 key deposit have not been returned to her.

Findings – Tenant’s Application

Section 38(1) of the Act requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant’s forwarding address writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit.

If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the deposit (section 38(6)). If the tenant does not supply his forwarding address in writing within a year, the landlord may retain the deposit.

The evidence in this case is that the tenancy ended on June 30, 2009 and the tenant provided her forwarding address and returned her key to the landlord on June 29, 2009. The landlord filed an application for dispute resolution to retain the deposit which application is date stamped by the Residential Tenancy Branch on July 15, 2009. While

that application has been dismissed because I have found it was not served, the fact is that the landlord did make application within 15 days of the end of the tenancy as required by the Act. I therefore find that the landlord is not obligated to return double the deposit but he is obligated to return the deposit itself and the key deposit to the tenants forthwith.

Having been successful in this application, I find further that the tenant is entitled recover the \$50.00 filing fee paid for this application.

Total monetary award payable by the landlord to the tenant:

| | |
|--|-----------------|
| Security Deposit paid on January 13, 2005 | \$462.00 |
| Key Deposit | 50.00 |
| Interest on original amount paid from date security deposit paid to date of this order | 16.35 |
| Filing Fees | 50.00 |
| TOTAL MONETARY AWARD | \$578.35 |

The tenant is provided with an Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.